

DRAFT-CHARGING LETTER

Mr. Henry L. Lavery III
President
Security Assistance International, Inc.
507 Devonshire Drive NE
Vienna, Virginia 22180

Re: Investigation of Security Assistance International, Inc.,
regarding potential violations of the AECA and the ITAR.

Dear Mr. Lavery:

(1) The Department of State ("Department") charges that Mr. Henry L. Lavery III as president of Security Assistance International, Inc. (SAI) ("Respondent") violated the Arms Export Control Act ("Act") and the International Traffic in Arms Regulations ("ITAR" or "Regulations") by omitting material facts on export license applications, aiding and abetting export violations, and in connection with other matters as set forth herein concerning the Respondent's business activities. Four (4) violations are alleged at this time. The essential facts constituting the alleged violations involved are described herein. The Department reserves the right to amend this draft charging letter (See 22 C.F.R. § 128.3(a)), including through a revision to incorporate additional charges stemming from the same misconduct of the Respondent in these matters. Please be advised that this is a draft-charging letter to impose debarment or civil penalties pursuant to 22 C.F.R. § 128.3.

PART I - RELEVANT FACTS

JURISDICTIONAL REQUIREMENTS:

(2) Respondent is a corporation organized under the laws of the State of Maryland.

(3) During the period covered by the offenses set forth herein, Respondent was engaged in the export of defense articles and was registered as a broker and an exporter with the Department of State, Directorate of Defense Trade Controls ("DDTC") in accordance with Section 38 of the Act and § 122.1 of the Regulations.

(4) Respondent is a U.S. person within the meaning of § 120.15 of the Regulations and is subject to the jurisdiction of the United States, in particular with regard to the Act and Regulations.

(5) The defense articles constituting the violations outlined below are designated as controlled under various categories of the U.S. Munitions List (USML), § 121.1 of the Regulations.

PART II - BACKGROUND

(6) Respondent has been registered with DDTC since 1990. Respondent's Website claims that since 1980 he has "delivered more than 19,500 licenses and other approvals for companies and foreign embassies." Respondent's website claims compliance and training are its specialty.¹

(7) On June 3, 1999 the Respondent entered into a Consent Agreement with the Department as a result of a Proposed Charging Letter alleging the Respondent violated the Regulations numerous times between April 1993 and April 1999.

(8) The Respondent was cited for submitting export applications on behalf of clients that contained the Respondent's signature as if it were the

¹ DTCC records do not corroborate this claim. Licensing indices show SAI having a total of 14 approved authorizations.

applicant's signature; failing to maintain the records as required for its export, temporary import and temporary export applications; obtaining export licenses on behalf of firms whose registrations had expired or who were never registered; and brokering without being registered and without authorization.

(9) Under the Consent Agreement with the Department, the Respondent agreed to pay a \$10,000 penalty, register as a broker, reconstruct all export records, cease participating directly or indirectly in exports of defense articles and/or defense services, and to implement a compliance program outlining operating procedures and internal controls for adherence to the Regulations.

(10) On or about August 1, 2001, the Respondent completed the requirements of the Consent Agreement and his export privileges were reinstated by the Department.

OBTAINING AUTHORIZATIONS ON BEHALF OF OTHERS:

(11) On July 11, 2005, the Office of Defense Trade Controls Compliance (DTCC) conducted a review of SAI's ITAR compliance program. During the review, the Respondent stated that only a small portion of his business consisted of obtaining Department export license approvals (i.e., licenses and re-transfer/re-export authorizations) on behalf of foreign clients. In those instances the clients did everything related to the sale, including contacting the suppliers and ordering the articles directly. The Respondent only applied for the license. Respondent stated that he rarely physically examined or took possession of the shipments that his clients exported under Department license approvals using his registration code.

(12) Respondent further stated that the majority of his business now is assisting registered companies in filling out export license documents required by the Department of State and the Department of Commerce.

(13) On July 14, 2003, Respondent applied for a temporary export approval for an AN/PVS 18 Night Vision device with Generation III image intensifier tube, an AN/PVS 14 Night Vision device with Generation III tube, and a Color Path technology demonstrator for the purpose of

demonstrating it in Germany. Tenebraex Corporation ("Tenebraex") was listed on the application as the source of the commodities and the U.S. consignor.

(14) Tenebraex, the U.S. manufacturer of the Color Path technology demonstrator and the owner of the two night vision devices, was not registered with DDTC and therefore ineligible to obtain an export authorization.

(15) In the July 14, 2003 application for the temporary export of Tenebraex's defense articles, the Respondent included a cover letter. The letter provided false and misleading information by omitting that the unregistered manufacturer was doing the exporting. Respondent's only involvement in the export was using his registration to obtain the export license.

(16) On October 6, 2003, Respondent was granted approval under DSP-73 license T-101212 for the temporary export to Germany of the night vision equipment. Respondent aided and abetted Tenebraex, an unregistered manufacturer and exporter with obtaining a temporary export license approval.

(17) Using Respondent's DSP-73 license, Tenebraex, conducted a marketing demonstration to foreign persons in the U.S. Respondent was not present at the demonstration and had no control over the demonstration nor was Respondent able to take all necessary steps to ensure the security of the equipment on the license from loss, theft or unauthorized access as required by a proviso imposed on the license. When asked where and when the presentation occurred, Respondent said he had no knowledge, but believed it occurred in a hotel in the United States.

(18) On April 23, 2004, using Respondent's DSP-73 license T-101212, Tenebraex, an unregistered manufacturer and exporter, temporarily exported night vision equipment to Germany to do another demonstration of the Color Path technology. Respondent was not present in Germany for the April 26, 2004 demonstration nor did Respondent have any control over the demonstration. Respondent was unable to take all necessary steps to ensure the security of the equipment on the license from loss, theft or unauthorized

access as required by a proviso imposed on the license. Respondent was unaware of the specifics of this export or the demonstration conducted in Germany.

(19) Tenebraex stated in its August 31, 2005 response to a DTCC inquiry that it wanted to demonstrate its night vision technology to a German company in furtherance of a joint night vision sniper scope venture. A representative of the German company was planning to be in the United States shortly and Tenebraex contacted the Respondent as an export consultant for guidance. The Respondent informed Tenebraex of their requirement to register and obtain an export license approval. Respondent told Tenebraex that given the time involved in registering and the Respondent's conclusion that Tenebraex was fabricating articles for research and development, the Respondent could apply for a temporary export license on behalf of Tenebraex. The licensed demonstration would occur under the Respondent's registration. The Respondent also advised Tenebraex at the same time to submit a registration application to the Department. Respondent was aware that Tenebraex was not registered pursuant to the Regulations and therefore Tenebraex was ineligible to apply for a Department export license approval.

(20) Respondent's records for DSP-73 license T-101212 during the review consisted only of a copy of the front page of the license. No other documents for this approval were provided to DTCC. Respondent had no records documenting the dates of export, dates of demonstration, or dates of importation. Respondent stated that Tenebraex was in possession of the actual license.

(21) Respondent referred to this October 6, 2003 DSP-73 as an "interim license" until Tenebraex could register and obtain its own export authorization. On December 11, 2004, eight months after the Department approved the DSP-73, Tenebraex submitted documentation to DDTC to register as a manufacturer and exporter of night vision equipment. (Tenebraex had previously been registered with DDTC, but had allowed its registration to expire). DDTC granted registration on January 16, 2004.

(22) Respondent stated that he had performed this “interim license” service for other companies that were not registered, but when asked for specifics, Respondent declined to provide additional information.²

RECORD-KEEPING DEFICIENCIES:

(23) For the time period under review (January 1, 2003 to June 1, 2005), Department records indicate that Respondent has 11 license approvals and one application pending. Department records also included numerous rejected or denied license requests.

(24) By letter dated June 10, 2005, DTCC notified the Respondent that on July 11, 2005, all records for export approvals should be available for review. In response to this letter, Respondent requested that he be provided with a list of license case numbers for all his approvals showing the end-user.

(25) On July 11, 2005, Respondent provided partial records on 5 permanent export license approvals, 1 temporary export license approval, and 1 temporary import license approval. These documents consisted of photo-copies of only licenses and/or applications. The respondent provided no documents concerning the acquisition and disposition of the defense articles. Respondent claimed that his filing system rendered it very difficult to find the necessary records.

(26) When Respondent was informed of the record-keeping deficiencies, Respondent provided additional documents on July 27, 2005. The majority of the additional documents consisted of correspondence with the Department on license issues as well as one airway bill for DSP-61 093350, a purchase order for DSP-5 935053, a list of suppliers for DSP-5 952926 and two purchase orders for DSP-5 961303. These documents, however, did not meet the requirements of 22 C.F.R. § 122.5(a) to maintain

² A review of DDTC licensing records found that on March 14, 2003, Respondent applied for a DSP-5 license application to export night vision equipment. This license application was returned without action to the Respondent because follow-up documentation that was obtained clearly showed the equipment source was actually an unregistered exporter.

records concerning acquisition and disposition of defense articles, to include copies of all documentation on exports, applications and licenses and their related documentation.

(27) Respondent did not have complete records and/or was unable to produce records required to be maintained by the Regulations. Respondent's records did not contain copies of documents previously submitted with license applications. Required documents showing Respondent's acquisition and disposition of defense articles were missing.

ADDITIONAL DEFICIENCIES:

(28) On February 1, 2003, Respondent submitted DSP-61 091732 to the Department for authorization to transship South African manufactured grenade launchers and parts valued at \$993,009.00 through the United States to Colombia. These grenade launchers are controlled under USML Category IV (b) and are considered Significant Military Equipment (SME).

(29) The grenade launchers had already been imported in the United States without authorization and were under seizure by U.S. Customs and Border Protection. Respondent's sole function in this transaction was to facilitate the release from seizure on behalf of the Colombian end-user and to obtain a Department license approval.

(30) On May 5, 2003, the Department granted Respondent approval, under DSP 61-091732 with provisos, to export the grenade launchers and parts from the United States to Colombia.

(31) Respondent failed to comply with a license proviso requiring that export documentation be provided to DDTC confirming the shipment was exported and en route to Colombia.

PART III – LICENSE & REPORTING REQUIREMENTS

(33) § 120.3 of the Regulations provides the policy on designating and determining defense articles and defense services.

(34) § 120.17 (4) of the Regulations defines an export as including disclosing or transferring technical data to a foreign person, whether in the United States or abroad.

(35) § 121.1 of the Regulations identifies the articles, services and related technical data designated as defense articles and defense services pursuant to § 38 and § 47(7) of the Act.

(36) § 122.5 of the Regulations provides that registrants are required to maintain records concerning, among other things, the manufacture, acquisition and disposition of defense articles; the provision of defense services; brokering activities; and information on political contributions, fees or commissions. Such records shall be available at all times for inspection by DDTC and upon request, the person maintaining the records must furnish the records to DDTC.

(37) § 127.1 (a) (4) of the Regulations provides that it is unlawful to violate any terms or conditions of granted licenses or approvals.

(38) § 127.1 (d) of the Regulations provides that it is unlawful to willfully cause, aid, abet, counsel, demand, induce, procure or permit, the commission of an act prohibited by, or the omission of any act required by the 22 U.S.C. 2778, 22 U.S.C. 2779, or any regulation, license approval, or order issued there under.

(39) § 127.2 of the Regulations provides that it is unlawful to use any export or temporary import control document misrepresenting or omitting a material fact for the purpose of exporting any defense article or technical data or the furnishing of any defense service for which a license or approval is required by the ITAR.

PART IV - THE CHARGES

Charge 1 - Omission of Facts

(40) Respondent violated 22 C.F.R. § 127.2 (a) when on July 14, 2003, he omitted material facts in his application for authorization to temporarily export for demonstration purposes ITAR-controlled night vision equipment. Specifically that Respondent's application omitted that he had no role in this transaction other than to provide the use of its registration to obtain an export authorization for a non-registered U.S. company and would therefore be in no position to ensure the terms of the export approval would be followed.

Charge 2 - Aiding and Abetting

(41) Respondent violated 22 C.F.R. § 127.1 (d) of the Regulations when on or about April 23, 2004 he willfully caused, aided and abetted, an unregistered U.S. company ineligible to apply for export authorization, to export from the United States ITAR-controlled night vision equipment.

Charge 3 - Recordkeeping

(42) Respondent violated 22 C.F.R. §§ 127.1(d) and 122.5 of the Regulations when commencing on or about January 1, 2003 and continuing through June 1, 2005, he received 11 export authorization approvals from the Department for permanent exports, temporary imports, temporary exports and retransfer authorizations and failed to maintain complete records on the acquisition and disposition of the defense articles receiving Departmental authorizations as required under 22 C.F.R. 122.5.

Charge 4 - Violating Terms of a License

(43) Respondent violated 22 C.F.R. § 127.1 (a)(4) when he failed to comply with a proviso imposed on DSP-61 091732 and provide to the Department the requisite export documentation. The proviso required Respondent to provide the Department with export documentation confirming that this shipment cleared U.S. Customs and was en route to Colombia.

PART V - ADMINISTRATIVE PROCEEDINGS:

(44) Pursuant to 22 C.F.R. § 128 administrative proceedings are instituted against Respondent for the purpose of obtaining an Order imposing civil administrative sanctions that may include the imposition of debarment or civil penalties. The Assistant Secretary for Political-Military Affairs shall determine the appropriate period of debarment, which generally shall be for a period of three years in accordance with § 127.7 of the Regulation, but in any event will continue until an application for reinstatement is submitted and approved. Civil penalties, not to exceed \$500,000 per violation, may be imposed in accordance with § 127.10 of the Regulations.

(45) A Respondent has certain rights in such proceedings as described in Part 128 of the Regulations. Currently, this is a draft-charging letter; however, in the event you are served with a charging letter you are advised of the following matters. You are required to answer the charging letter within 30 days after service. A failure to answer will be taken as an admission of the truth of the charges. You are entitled to an oral hearing if a written demand for one is filed with the answer or within seven (7) days after service of the answer. You may, if so desired, be represented by counsel of your choosing. The answer, written demand for oral hearing (if any) and supporting evidence required by § 128.5 (b) shall be in duplicate and mailed to the Administrative Law Judge designated by the Department to hear this case. A copy shall be simultaneously mailed to the Director, Office of Defense Trade Controls, Compliance, Department of State, 2401 E. Street, NW, Washington, D.C. 20037. If you do not demand an oral hearing, you must transmit within seven (7) days after the service of your answer, the original or photocopies of all correspondence, papers, records, affidavits, and other documentary or written evidence having any bearing upon or connection with the matters in issue. Please be advised also that charging letters may be amended from time to time, upon reasonable notice. Furthermore, pursuant to § 128.11 cases may be settled through consent agreements, including after service of a Draft Charging Letter.

(46) Be advised that the U.S. Government is free to pursue civil, administrative, and/or criminal enforcement for violations of the Arms Export Control Act and the International Traffic in Arms Regulations. The Department of State's decision to pursue one type of enforcement action

does not preclude it or any other department or agency from pursuing another type of enforcement action.

Sincerely,

David C. Trimble
Director,
Office of Defense Trade Controls
Compliance